REMARKS

Claims 1-61 are currently pending in the present application. Claims 1-21, 23-28, 31-33, 35-41, 48-49, and 51 have been amended. No new claims have been added. No claims have been canceled or withdrawn.

Applicants have carefully studied the outstanding Office Action. The present Response is intended to be fully responsive to all points of rejection raised by the Examiner and is believed to place the application in condition for allowance. Favorable reconsideration and allowance of this application is respectfully requested. Applicants respectfully request reconsideration and withdrawal of the Examiner's rejections in view of the foregoing amendments and following remarks.

Introduction

The latest office action contains rejections of all claims based solely on 35 USC § 103. The primary reference cited by Examiner is the Hohenacker reference (WIPO Pub. No. WO/2002/080519). The vast majority of the claims were originally rejected under 35 USC § 102(e) as being anticipated by Hohenacker including all of the independent claims. Examiner no longer asserts the § 102(e) rejections but continues to assert the § 103(a) rejections against all claims.

Examiner uses other references in an attempt to show support for individual items not explicitly taught by Hohenacker, like an enclosed studio. Examiner asserts that most of the elements of independent claims 20 and 38 are shown by Hohenacker and that it would be obvious to combine Hohenacker with other references to reach the claimed invention.

Generally speaking, the Hohenacker reference would be viewed as substantially different from the claimed invention by one with skill in the art. In fact, one of ordinary skill in the art reading Hohenacker would be led away from the current invention and would not be motivated either by Hohenacker or by the skill of the person ordinary skill in the art to combine Hohenacker with another reference to reach the claimed invention.

It is important that Examiner consider the subject matter of the claimed invention as a whole to determine whether it would have been obvious at the time the invention was made. 35 USC § 103(a). "It is difficult but necessary that the [examiner] forget what he or she has been

taught . . . about the claimed invention and cast a mind back to the invention was made (often as here many years), to occupy the mind of one skilled in the art." *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303, 313 (Fed. Cir. 1983), *cert. denied*, 469 US 851(1984); MPEP 2141.01 III.

Hohenacker, although directed to a method and system for recording video data, teaches away from the present invention. The invention of Hohenacker would not be suited for the purpose for which the present invention was made.

Hohenacker relates to a "method and to a system for the recording of video data at at least one venue (or scene), in particular at a plurality of venues (or scene)." (Hohenacker ¶ 0001.) The express purpose of having a video recording at the multiple scenes is to provide entertainment to viewers in the field of television and on the internet. Hohenacker cites to the "need for entertainment with individual and spontaneous elements and for possibilities to win over any desired people in a simple manner to participate in the most varied activities, with activities being particularly promising in which 'the man or woman on the street' can participate and the viewer is thus entertained by people like him, i.e. by people with whom he can identify." (Hohenacker ¶0002.)

In other words, the Hohenacker discloses an invention such that "any desired location in the world can be made into a stage for 'the man or woman on the street'." Thus, Hohenacker teaches the use of a video system to essentially create remote stages. Hohenacker does not teach the use of the video system being multiple enclosed studios as is claimed by the present invention. Examiner should distinguish between the attempt to create a "studio like" atmosphere and an actual studio capable of producing a quality video product. While Hohenacker describes ways such as using an "on air" display of creating a studio atmosphere, this is only done to give the performer and viewers the sense of being at a real studio. The studios of the present invention are real studios.

Moreover, Hohenacker discloses the use of a mobile telephone to set up a communication link with the camera system associated with the scene. (Hohenacker ¶0006.) Hohenacker attaches significance of the fact that the communication link can be a telephone: "the invention advantageously uses an infrastructure present at the scene with a telephone and, in the case of a mobile telephone, an infrastructure present with the user." (Hohenacker ¶0007.) Hohenhacker

even discloses the use of the phone to act as the audio recording input. While Hohenacker describes the use of an optional sound recording system installed at the scene, the purpose of the separate sound recording system is apparently so that "surrounding sound can hereby be picked up and thus the atmosphere of the scene be captured." (Hohenacker ¶0019.) Thus, there is no question that Hohenacker is advocating the use of an open air type environment rather than a traditional studio that is isolated from outside sounds.

The system described by Hohenacker is a crude but simple portable system. The idea is to allow the system to be implemented anywhere without regard to the availability of communications infrastructure. Hohenacker even teaches that the user should input data using the keypad of the telephone. (Hohenacker ¶0029.) Hohenacker goes on to disclose the use of a building for example a restaurant, a discotheque, a cinema or event hall as the scene. Thus the scene can be a part of the building made as the stage. (Hohenacker ¶0038.) However, nowhere does Hohenacker suggest the use of an enclosed studio that allows the user to create a performance without interference from outside sounds. In fact, exactly the opposite is suggested in the encouragement of audience participation in the scene. Hohenacker teaches that a sound system is not required and that that is one of the advantages of the invention:

> Only a camera system thus has to be made available for each scene by an operator of the system. The further infrastructure is already present when the mobile telephones of the users and the expected mobile radio networks are used or a telephone present at the scene is used. Otherwise only a telephone has to be made available at the scene.

(Hohenacker ¶0057.) Hohenacker also teaches placing the camera at a location that will protect it from vandalism. This is necessary because of the open air nature of the scene taught by Hohenacker:

> For this purpose, the camera system **27** can be located, for example, in an apartment from where there is a good view of the scene **11**. The camera system **27**, in particular the camera **39** is preferably positioned in a hidden or camouflaged manner such that uninitiated persons cannot discover the location of the camera **39**.

(Hohenacker ¶0064.) Moreover, it is significant that Hohenacker views the telephone as an essential element of his cliamed invention. The only independent claims, 1 and 16 both require the use of a telephone.

Examiner asserts that most of the elements of independent claims 1 and 51 are shown by Chu and that it would be obvious to combine Hohenacker with other references to reach the claimed invention. However, Chu is a novelty karaoke recording system similar to a photo booth for taking pictures. The present invention provides for a serious studio for recording and while a karaoke-style system may be used with the present invention in some instances, there is no reason why one with skill in the art would be modified to change Chu to provide an aggregation system for recorded performances that makes it simple and cost effective for users who may not ordinarily have the means to gain exposure for their talents.

The present invention, is not a crude system like Hohenacker and is not a novelty item like Chu. Applicants claim the use of an enclosed studio that records both video and audio from the user. By making the recording in an enclosed studio, a high quality production can be made without interference from outside sounds. Moreover, by having a plurality of studios located in different locations, a wider variety of people will have access to these studios for the purpose of uploading a production. This idea is revolutionary and has not been suggested or taught by anyone of skill in the art.

The present invention is not intended to act as an open air stage for entertainment purposes. What the inventors of the present invention set out to accomplish was to provide a studio system that is available to the average person and aggregate the recorded performances together to allow information seekers such as talent scouts to efficiently review the performances uploaded by the various users. As of the date of filing the present application, there had been nothing of its kind in use. Moreover, at the time, it was still an expensive proposition to create and submit high quality video files to promote a particular talent or skill. The present invention solves the long felt need of bringing users who may not have previously had the means or the time together with the people who may be able to utilize the talents and skills of those users.

Claim Rejections - 35 USC § 103

Claims 20, 30-31

The Examiner has rejected claims 20 and 30-31 under 35 USC § 103(a) as being unpatentable over Hohenacker (WIPO Pub. No. WO/2002/080519 A2) (hereinafter "Hohenacker") in view of Liu and further in view of Qian.

Response:

Regarding claim 20, Applicants have amended claim 20 to better define the claimed invention. As discussed above, Hohenhacker teaches away from the claimed invention. Moreover, Hohenhacker does to teach the provision of an enclosed studio but rather an open air "scene." Moreover, Examiner has given no reasons why it would be obvious to combine Liu and Qian with Hohenhacker given how Hohenacker teaches away from the present invention.

Claim 30 is patentable for the same reasons that claim 20, from which it depends is patentable.

Regarding claim 31, the claim is patentable for the same reasons argued above in regard to claim 20.

Claims 21

The Examiner has rejected claim 21 and 30-31 under 35 USC § 103(a) as being unpatentable over Hohenacker, Liu, Qian and Vizinia.

Response:

Regarding claim 21, the claim is patentable for the same reasons argued above in regard to claim 20. Claim 21 has been amended for clarity. Additionally Examiner has given no reasons why it would be obvious to combine Hohenhacker, Liu, Qian and Vizinia.

Claims 24, 32-33, 35-37

The Examiner has rejected claims 24, 32-33, and 35-37 under 35 USC § 103(a) as being unpatentable over Hohenacker, Liu and Qian as applied to claim 20 in view of Chacker (U.S. Patent No. 6,578,008) (hereinafter "Chacker").

Response:

Claims 24, 32-33 and 35-37 are patentable for the same reasons argued above in regard to claim 20. Moreover Examiner has failed to give the reasons why it is obvious to make the combinations referenced.

Regarding claim 33, Applicants respectfully submit the Examiner is conflating a studio user or performer with an information seeker. Chacker discloses a consuming public selecting a pre-determined category. For example, at column 10, lines 30-35, Chacker discloses:

> The music collection spans dozens of categorized genres, including pop, rock, classical, country, alternative, children's, easy listening, electronic, hip hop, rap, blues, jazz, international. Those music categories are searchable by genre, artists or location.

These are not user-created categories, but "pre-determined" categories. Paragraph 33 of the present invention, on the other hand, teaches:

> Moreover, if a pre-determined sub-category failed to define the subject matter of the recording, the studio user could create a user-defined category 155 and/or sub-category.

Applicants also direct Examiner to Figure 1b of the present invention. Consequently, unlike Chacker, the present invention permits a performer to select a category not pre-determined, such as "angel/investors" as a category and something like "oil and gas" as a sub-category. Chacker fails to teach or suggest limitations providing such flexibility. In view of the clarification above, Applicants respectfully request the Examiner withdraw the rejection.

Regarding claims 36 and 37, the cited section of Chacker discloses a ranking that must be checked manually. The claims have been amended to better delineate the intended metes and bounds of the claimed invention. The amendments are supported by paragraphs 65 and 66 of the instant published patent application. In view of the clarification above, Applicants respectfully request the Examiner withdraw the rejection.

Claim 25

The Examiner has rejected claim 25 under 35 USC § 103(a) as being unpatentable over Hohenacker, Liu, and Qian as applied to claim 20 in further view of Maroney.

Response:

Claim 25 is patentable for the same reasons argued above in regard to claim 20. Moreover Examiner has failed to give the reasons why it is obvious to make the combinations referenced.

Claims 22, 29, and 34

The Examiner has rejected claims 22, 29, and 34 under 35 USC § 103(a) as being unpatentable over Hohenacker, Liu, and Qian as applied to claim 20 in further view of what was well known in the art.

Response:

Claims 22, 29 and 34 are patentable for the same reasons argued above in regard to claim 20. Moreover Examiner has failed to give the reasons why it is obvious to make the combinations referenced.

Claims 23, 27, 28, 38-39, 43, 44, 46-47, and 49

The Examiner has rejected claims 23, 27, 28, 38-30, 43, 44, 46-47, and 49 under 35 USC § 103(a) as being unpatentable over Hohenacker in view of Chu, et al. in further view of Qian.

Claim 38

Response:

Claim 38 has been amended to claim the provision of a "plurality of enclosed studios" and is in condition for allowance. Additionally, for the reasons argued above, Hohenacker teaches away from the present invention and is not properly combinable with other references to reach the claimed invention. Examiner has failed to give reasons why these references should be combined.

Claim 23

Response:

Claims 23 is patentable for the same reasons argued above in regard to claim 20. Moreover Chu does not teach a professional media kit. There is no suggestion to combine demographic information with the CD or VCR tape of Chu. Examiner has also failed to give reasons why these references should be combined. In view of the above, Applicants respectfully request the Examiner withdraw the rejection because it fails to teach or suggest a professional media kit that comprises demographic information.

Claims 27-28, 39

Response:

Claims 27-28 are patentable for the same reasons argued above in regard to claim 20. Claims 39-40 are patentable for the same reasons argued above in regard to claim 38. Moreover Examiner has failed to give the reasons why it is obvious to make the combinations referenced.

Claims 43-44

Response:

Applicants respectfully request the Examiner point out the portion of Hohenacker that teaches the limitation of a "professional media kit" that comprises "said demographic information," or withdraw the rejection. In view of the above, Applicants respectfully request the Examiner withdraw the rejection.

Claims 46-47, 49

Response:

Claims 46-47, 49 are patentable for the same reasons argued above in regard to claim 38. Moreover Examiner has failed to give the reasons why it is obvious to make the combinations referenced.

Claims 40, 50

The Examiner has rejected claims 40 and 50 under 35 USC § 103(a) as being unpatentable over Hohenacker, Chu and Qian as applied to claims 38-39, and further in view of Vizinia.

Response:

Claims 40, 50 are patentable for the same reasons argued above in regard to claims 38-39. Moreover Examiner has failed to give the reasons why it is obvious to make the combinations referenced.

Claim 26

The Examiner has rejected claim 26 under 35 USC § 103(a) as being unpatentable over Hohenacker, Liu, and Qian as applied to claim 20, in view of Foroutan.

Response:

Claim 26 is patentable for the same reasons argued above in regard to claim 20. Moreover Examiner has failed to give the reasons why it is obvious to make the combinations referenced.

Claims 41-42 and 61

The Examiner has rejected claims 41-42 and 61 under 35 USC § 103(a) as being unpatentable over Hohenacker, Chu, and Qian as applied to claims 38-39, in view of what is well known in the art.

Response:

Claim 41-42 and 61 are patentable for the same reasons argued above in regard to claim 38-39. Moreover Examiner has failed to give the reasons why it is obvious to make the combinations referenced.

Claim 48

The Examiner has rejected claim 48 under 35 USC § 103(a) as being unpatentable over Hohenacker, Chu and as applied to claim 38, in view of Chacker.

Response:

Regarding claim 48, the cited section of Chacker discloses a ranking that must be checked manually. The claim has been amended to better delineate the intended metes and bounds of the claimed invention. Claim 48 is patentable for the same reasons argued above in regard to claim 38. Moreover Examiner has failed to give the reasons why it is obvious to make the combinations referenced.

Claims 1-6, 8-10, 13, 16, 45, 51-54, and 57-60

The Examiner has rejected claims 1-6, 8-10, 13, 16, 45, 51-54, and 57-60 under 35 USC § 103(a) as being unpatentable over Chu, Hohenacker, Foroutan, in further view of Qian.

Claims 1 and 51

Response:

All limitations of the claimed invention must be considered when determining patentability. *In re Lowry*, 32 F.3d 1579, 1582, 32 U.S.P.Q.2d 1031, 1034 (Fed. Cir. 1994). Applicants first note that the claim term "re-encoded" has not been cited in the prior art. Consequently, for at least this reason, Applicants submit that claim 51 and claims dependent thereon are novel and unobvious for at least this reason.

Further, it is improper to combine the references where the references teach away from their combination. MPEP 2145(X)(D)(2); *In re Grasselli*, 713 F.2d 731, 743, 218 USPQ 769,779 (Fed. Cir. 1983). The purpose of Chu is portable media for a "personal" recording – there is no need, desire, or want to provide a recorded performance to a remote location. When considered as a whole, Chu clearly is directed towards a private recording. The title of Chu is "Personalized karaoke recording studio." The background section discusses the desire in the art for people to make recordings of "their performances for their own personal uses." (col. 1, lns. 38-39). Consequently, one having ordinary skill in the art looking at Chu, would not incorporate the very different open-air performance teachings of Hohenacker to arrive at the claimed invention.

Further, the claims have been amended to claim a "plurality of enclosed studios" with a "plurality of input terminals associated with said plurality of enclosed studios. These limitations in combination with the others are not taught by the prior art for the reasons discussed above with

regard to the Hohenacker reference. Moreover, Examiner fails to explain the reasons why the alleged combinations are obvious.

Claims 2 and 57, 3, 4 and 58, and 5

Response:

Claim 2-5 are patentable for the same reasons argued above in regard to claim 1. Claims 57-58 are patentable for the same reasons argued above in regard to claim 51. Moreover Examiner has failed to give the reasons why it is obvious to make the combinations referenced.

Claims 6, 8, 9, 10, 13 and 53-54, 16 and 60, 45, 59, and 52

Response:

Claims 6, 8, 9, 10, 13 and 53-54, 16 and 60, 45, 59, and 52 are patentable for the same reasons argued above in regard to their respective independent claims. Moreover Examiner has failed to give the reasons why it is obvious to make the combinations referenced.

Claims 12, 14-15, 17-19, and 55-56

The Examiner has rejected claims 7, 12, 14-15, 17-19, and 55-56 under 35 USC § 103(a) as being unpatentable over Chu, Hohenacker, Foroutan, and Qian as applied to claims 1 and 51, in further view of Chacker.

Claim 12

Response:

Claim 12 is patentable for the same reasons argued above in regard to claim 1. Moreover Examiner has failed to give the reasons why it is obvious to make the combinations referenced.

Claims 14 and 55

The Examiner states:

Response:

Regarding claims 14 and 55, Applicants respectfully submit the Examiner is conflating a studio user or performer with an information seeker. Chacker discloses a consuming public selecting a pre-determined category. For example, at column 10, lines 30-35, Chacker discloses:

> The music collection spans dozens of categorized genres, including pop, rock, classical, country, alternative, children's, easy listening, electronic, hip hop, rap, blues, jazz, international. Those music categories are searchable by genre, artists or location.

These are not user-created categories, but "pre-determined" categories. Paragraph 33 of the present invention, on the other hand, teaches:

> Moreover, if a pre-determined sub-category failed to define the subject matter of the recording, the studio user could create a user-defined category 155 and/or sub-category.

Applicants also direct Examiner to Figure 1b of the present invention. Consequently, unlike Chacker the present invention permits a performer to select a category not pre-determined, such as "angel/investors" as a category and something like "oil and gas" as a sub-category. Chacker fails to teach or suggest limitations providing such flexibility. In view of the clarification above, Applicants respectfully request the Examiner withdraw the rejection.

Claims 15, 17 and 56, 18, and 19

Response:

Claims 15, 17 and 56, 18, and 19 are patentable for the same reasons argued above in regard to their respective independent claims. Moreover Examiner has failed to give the reasons why it is obvious to make the combinations referenced.

Claim 7, 11

Claims 7 and 11 are patentable for the same reasons argued above in regard to their respective independent claims. Moreover Examiner has failed to give the reasons why it is obvious to make the combinations referenced.

CONCLUSION

It is respectfully urged that the subject application is patentable over the references cited by Examiner and is now in condition for allowance. Applicants request consideration of the application and allowance of the claims. If there are any outstanding issues that the Examiner feels may be resolved by way of a telephone conference, the Examiner is cordially invited to contact Vincent Allen at 972-367-2001.

The Commissioner is hereby authorized to charge any additional payments that may be due for additional claims to Deposit Account 50-0392.

Respectfully submitted,

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